



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord's agent withdraw their application for a Monetary Order for unpaid rent or utilities and for money owed or compensation for damage or loss

The tenant's agent and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant's agent testified that the tenant did not receive the landlord's evidence. The landlord provided evidence that this was sent to the tenant by registered mail on September 16, 2014 and is therefore deemed to be served five days after it was sent, pursuant to s. 90(a) of the *Act*. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The parties agreed that the tenant MW was removed from the tenancy agreement within a short time after the tenancy started and his name should not have been included on this application.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep all or part of the security or pet deposit?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2013 for a fixed term of one year. At the end of this agreement the tenancy reverted to a month to month tenancy. Rent for this unit was \$1,600.00 per month due on the 1st of each month. The tenant paid a security deposit of \$800.00 and a pet deposit of \$800.00 just prior to the start of the tenancy.

The landlord's agent testified that the tenant did not leave the rental unit reasonably clean at the end of the tenancy. The landlord's agent testified that the tenant did not disagree with this but did not sign anything to agree the landlord could keep any amount of the security deposit to cover the cleaning charges. The landlord's agent testified that they had to clean the bathroom, the fridge, the stove, the oven the windows and blinds. Then landlord used their own in house cleaner who cleaned for approximately five hours for \$15.00 an hour The landlord seeks to recover \$48.00 from the tenant.

The landlord's agent testified that there had been an accident in the unit where the tenants stove element had been left on. The tenant had left some grocery bags and a coat on the stove top and this created smoke. The fire department where called and they had to gain access to the unit by breaking down the fire door as the tenant was not at home. The door cost over \$200.00 to repair and the tenant had verbally agreed that as she was responsible for this that she would pay \$150.00 for the damage to the door.

The landlord's agent testified that the tenant had filled some small holes in the walls but had not removed the anchors in these holes or filled the holes properly. There were also some scuffs in the walls and trim and where the tenant had washed the walls the walls were left marked over large areas with swipe marks. The landlord's agent testified that they had to remove the anchors from the walls and refill the holes, sand and paint. The walls with swipe marks also had to be

painted over. The landlord's maintenance man completed the painting and the landlord seeks to recover \$121.50 for the painting and materials used.

The landlord's agent seeks an order to allow the landlord to keep part of the tenant's security deposit of \$319.50 for the damage plus the \$50.00 filing fee.

The tenant's agent disputed that the tenant had agreed the landlord could keep any amount for cleaning or for the repair to the door. The tenant's agent testified that the tenant, the tenant's agent and the tenant's step mother spent eight hours cleaning the unit at the end of the tenancy and it was left clean by anyone's standards. The tenant's agent testified that the walls were cleaned with a magic eraser and if the landlord wants to paint the unit each time a new tenant moves into the unit then this cost should not be the tenant's responsibility. Any marks or holes in the walls were no more than normal wear and tear.

The tenant's agent testified that the door to the unit was damaged by the fire department and the tenant does not accept that it is her responsibility as the landlord has not proven that the element on the stove was not faulty or that the stove was left on by the tenant. Unless the landlord can prove this then the tenant cannot be held responsible for damage caused by the fire department. The tenant's agent testified that the landlord has not provided prove as to the actual cost for the door repair.

The tenant's agent testified that they did fill in the anchor points on the walls but has questions as to when the landlord's pictures were taken and were these pictures of the tenant's unit. The tenant's agent testified that the tenant seeks to recover the security and pet deposits of \$1,600.00.

The landlord's agent testified that the tenant had emailed the landlord's agent after the landlord's agent had tried to collect the money for the damaged door. The tenant asked the landlord in her email why the landlord was not just deducting this damage from her security deposit. The landlord has not provided the email in evidence.

The landlord's agent testified that the tenant had agreed on the day of the move out that they only thing she was not responsible for was the painting of the unit and documented this on the

inspection report. The tenant argued with her father who is acting as the tenant's agent today about the cleaning costs. The landlord's agent asks the tenants agent if he arguing with his daughter about the cleaning and then walking away. The tenant's agent responded that he remembered them all talking and the landlord's agent picking up little things trying to add costs. The tenant then said she would let the landlord add the little things as she was anxious to make it all go away but never agreed in writing to this or to an amount.

The landlord's agent testified that the oven was never faulty. The tenant had done this same thing twice, leaving an element on, and the landlord did not get a report from the fire department concerning this matter.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for damage to the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has provided some phototropic evidence of holes in the walls which appear to have been filled and some scuff marks and cleaning swipes over larger areas of the walls; I am satisfied therefore that there was some minor damage left on the walls which had to be dealt with by the landlord. The landlord is seeking an amount of \$121.50 to repair and paint the walls; however, the landlord has provided no evidence to show the actual costs incurred to repaint the walls or that much of this damage is significantly more than normal wear and tear.

With regard to the landlord's claim for cleaning; under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

With regard to the landlord's claim for the damage to the tenant's door; I am satisfied that the door was damaged when the fire department had to gain entry to the tenant's unit. I am not satisfied that the landlord has provided sufficient evidence to meet the burden of proof as to the actual costs incurred to replace or repair the door.

I find that the landlord's claim for damages does not meet all of the components of the above test. I therefore dismiss the landlord's claim for \$319.50.

I find the landlord is not permitted to keep all or part of the tenant's security or pet deposit. The landlord has insufficient evidence to show that the tenant agreed the landlord could make any deductions from the security or pet deposit as this agreement must be in writing. As the landlord's claim for damages has failed the landlord must return the tenant's security and pet deposit of \$1,600.00.

As the landlords claim has been unsuccessful I find the landlord must bear the cost of filing their own application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,600.00** for the security and pet deposit, pursuant to s. 38(6)(b) of the *Act*. The Order must be served on the landlord. If the landlord fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 09, 2014

Residential Tenancy Branch

